

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

STATE OF DELAWARE DEPARTMENT  
OF NATURAL RESOURCES &  
ENVIRONMENTAL CONTROL,

Plaintiff,

v.

MOUNTAIRE FARMS OF  
DELAWARE, INC.,  
a Delaware Corporation.

Defendant.

Civil Action No. \_\_\_\_\_

**VERIFIED COMPLAINT**

Plaintiff, State of Delaware Department of Natural Resources and Environmental Control, by and through the Delaware Department of Justice, brings this lawsuit for declaratory and injunctive relief arising out of the actions of Defendant, Mountaire Farms of Delaware, Inc., in violation of the Federal Resource Conservation and Recovery Act (“RCRA”) codified in 42 U.S.C. § 6901 *et seq.* and the Federal Clean Water Act, 33 U.S.C. § 1251 *et seq.*

**Parties, Jurisdiction, and Venue**

1. Plaintiff, State of Delaware, Department of Natural Resources and Environmental Control (“DNREC”) and has jurisdiction and authority to regulate and protect the environment and natural resources of the State of Delaware.

2. DNREC is an administrative agency of the State of Delaware established by Chapter 80 of Title 29 of the Delaware Code.

3. DNREC has been legislatively authorized to exercise the police power of the State of Delaware in order to protect the health, safety, and welfare of the citizens of the State. In doing so, the Secretary enforces numerous environmental statutes and regulations, including federal delegation of administration of the Federal Resource Conservation and Recovery Act (“RCRA”) codified in 42 U.S.C. § 6901 *et seq.*; federal delegation of administration of the Federal Clean Water Act codified at 33 U.S.C. 1251 *et seq.* (the “CWA”), Delaware’s water pollution permit requirements codified in Chapter 60 of Title 7 of the Delaware Code (“Chapter 60”), Delaware’s *Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems* codified at 7 Del. Admin C. § 7101, and *Delaware’s Guidance and Regulations Governing the Land Treatment of Wastes*, 7 Del. Admin C. § 7103.

4. Defendant, Mountaire Farms of Delaware, Inc., (“Mountaire”) is a corporation organized and existing under the laws of the State of Delaware with a principal place of business located at 29005 John J. Williams Highway, Millsboro, Delaware 19966.

#### **Mountaire’s Operations in Millsboro Delaware**

5. Nitrate is a chemical compound that is recognized as a contaminant in the groundwater in Sussex County Delaware. Nitrates have an EPA established maximum concentration level of 10mg/L for drinking water (the “MCL”). Certain of the groundwater monitoring wells in and around the Facility have shown consistent, and in some cases increasing, levels of nitrates above the MCL. A number of residential drinking water wells in the vicinity of the Facility have tested at or above the MCL as well.

6. A contributing factor in the presence of nitrates in groundwater is the application of nitrogen to farm fields as a fertilizer, or through spray irrigation of treated wastewater and land application of wastewater treatment plant sludge.

7. Mountaire's Millsboro facility (the "Facility") is located adjacent to and alongside Swan Creek and the Indian River just northeast of Millsboro Delaware. The Facility slaughters and processes approximately 2 million chickens per week. All process and sanitary wastewater generated by the Facility, over 2 million gallons per day, is treated at the Facility's wastewater treatment plant (the "WWTP") which, among other processes, utilizes anaerobic lagoons. Rather than discharge wastewater treated at the WWTP into Swan Creek, the Facility's wastewater is utilized as spray irrigation on 13 spray fields in the immediate vicinity of the Facility. This spray irrigation is subject to Spray Irrigation Permit Number 359191-04, most recently renewed by DNREC on July 31, 2017 (the "Spray Permit"). The Facility's treated wastewater effluent contains a number of constituents that are subject to limits set forth in the Spray Permit.

8. Sludge from the Facility's WWTP is periodically land-applied to a number of different farm fields specially maintained by Mountaire for this purpose under Agricultural Permit Nos. AGU 1402-S-03 and AGU 1403-S-03, most recently renewed on June 1, 2014 (the "Land Application Permits").

9. Among the constituents limited by the Spray Permit is total nitrogen ("TN"). The facility has been designed for monthly effluent Total Nitrogen concentration of 15.6 mg/L. The total amount of nitrogen that may be applied annually to each spray field acre is 320 pounds (the "Effluent Limits"). DNREC imposes the Effluent Limits in order to ensure that the TN applied to Mountaire's spray fields approximates the uptake of TN from these fields by the crops planted

thereon (the “Agronomic Rate”). In this way, the majority of TN applied by Mountaire to its fields will not percolate into groundwater as nitrate in concentrates exceeding the MCL.

10. Similarly, the Land Application Permits limit the application of stabilized sludge from the WWTP to Agronomic Rates specified in the Land Application Permits in order to prevent excessive amounts of nitrates from entering the groundwater.

**Mountaire Exceeds the Effluent Limits and Harms the Environment**

11. Mountaire grossly exceeded the Effluent Limits in the Spray Permit for TN for calendar year 2017 as a result of a failure of the Facility’s WWTP, caused by Mountaire’s failure to properly maintain the facility.

12. Mountaire exceeded Effluent Limits for certain of its spray fields in prior years as well.

13. During all of 2017, Mountaire applied approximately 2,000,000 gallons of return activated sludge without submitting to DNREC a cropping plan or nutrient calculation for such planned crop as required under the Land Application Permits. Upon information and belief, the amount of sludge applied to the sludge fields was in excess of agronomic rates, thereby contributing to nitrate contamination in groundwater.

14. Many groundwater monitoring wells located downgradient of Mountaire’s sprayfields and sludge fields have demonstrated a gradual increase in nitrate levels since at least 2011.

15. Thirty-four (34) private residences located near the Facility, with drinking water wells, have had these wells tested by DNREC. Eighteen (18) of these drinking water wells tested for nitrites in excess of the MCL.

16. Upon information and belief, Mountaire's failure to keep its wastewater effluent sprayed on its spray fields to within the Effluent Limits specified in the Spray Permit, and to land apply sludge in accordance with an approved cropping plan and limited to specified agronomic rates, has caused or contributed to nitrate levels in the groundwater nearby the Facility exceeding the MCL, thereby causing an imminent and substantial endangerment to human health and the environment.

17. Upon information and belief, Mountaire's anaerobic lagoons are leaking, further causing nitrate contamination in the groundwater in the vicinity of the Facility.

**Count I – Imminent and Substantial Endangerment to Health or the Environment**

31. Pursuant to 42 U.S.C. § 6972(a)(1)(B), citizens, including States, are authorized to bring suit against any person who is the "past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage or disposal facility, who has contributed or who is contributing to the past or present handling, treatment, storage or disposal of any solid or hazardous waste which may present an imminent and substantial threat to human health or the environment."

32. Pursuant to 42 U.S.C. § 6903(27), solid waste is defined under RCRA as "any...discarded material, including solid, liquid or semi solid...material resulting from industrial, commercial...and agricultural operations."

33. Mountaire's practice of disposing of its process and sanitary wastewater onto spray fields with total nitrogen exceeding Spray Permit limitations has contaminated, and is continuing to contaminate, the surficial aquifer that is used as a drinking water resource by neighboring residences in a manner that presents an imminent and substantial danger to human health, and to the water quality of Swan Creek and Indian River.

### **Count II – Open Dumping**

34. 42 U.S.C. § 6945(a) prohibits the operation of “any solid waste management practice or disposal of solid waste which constitutes the open dumping of solid waste.” “Disposal” means “the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste . . . into or on any land or water[.]” 42 U.S.C. § 6903(3). Enforcement of this prohibition is available through RCRA’s citizen suit provision. 42 U.S.C. § 6945(a).

35. As required by statute, the United States Environmental Protection Agency has promulgated criteria under RCRA § 6907(a)(3) defining solid waste management practices that constitute open dumping. *See* 42 U.S.C. § 6944(a); 40 C.F.R. Parts 257 and 258. These regulations prohibit the contamination of any underground drinking water source beyond the solid waste boundary of a disposal site. 40 C.F.R. § 257.3-4(a). The definition of “underground drinking water source” includes an aquifer supplying drinking water for human consumption. 40 C.F.R. § 257.3-4(c)(4). The surficial aquifer contaminated by Mountaire meets this definition.

36. Mountaire’s practice of spray irrigation of wastewater and land application of sludge with TN in excess of permitted limits and agronomic rates, and Mountaire’s leaking lagoons, all constitute “open dumping,” which upon information and belief has caused contamination of an underground drinking water source beyond the boundaries of the Facility.

### **Count III – Clean Water Act Violations**

37. The CWA, at 33 U.S.C. § 1311(a) prohibits the discharge of a pollutant from a point source into waters of the United States unless such discharge is authorized under a National Pollutant Discharge Elimination System (“NPDES”) permit issued by an agency authorized to do so.

38. Mountaire's discharge of pollutants onto spray fields and sludge fields, and Mountaire's leaking lagoons, have upon information and belief contaminated groundwater that is hydrologically connected to Swan Creek and Indian River, both "waters of the United States" for purposes of the CWA. Such activities have also caused contaminated runoff from these fields into Swan Creek and the Indian River.

39. Mountaire has discharged pollutants into waters of the United States without a NPDES permit in violation of the CWA.

#### **Verification**

The Declaration of Virgil R. Holmes, Director, DNREC Division of Water, submitted in support and verification of the Complaint, is attached hereto as **Exhibit A** and incorporated herein by reference.

#### **Prayer for Relief**

WHEREFORE, Plaintiff DNREC prays for the following relief:

- (a) That this Court declare Defendant Mountaire to be in violation of both RCRA and the CWA.
- (b) That Defendant Mountaire be held liable under each claim for relief set forth in this Complaint;
- (c) That this Court enter a preliminary and permanent injunction prohibiting Mountaire from discharging effluent from its WWTP onto its spray fields in excess of Spray Permit limits.
- (d) That this Court enter a preliminary and permanent injunction prohibiting Mountaire from land applying sludge from its WWTP in violation of any limitation or condition in the Land Application Permits.

(e) That this Court enter a preliminary and permanent injunction prohibiting Mountaire from further contamination of underground drinking water, Swan Creek and the Indian River in violation of the CWA, RCRA or any permit issued by Plaintiff.

(f) That this Court enter a preliminary and permanent injunction requiring Mountaire to investigate and remediate groundwater contamination caused by its spray irrigation of WWTP effluent and land application of WWTP sludge.

(g) That this Court enter a preliminary and permanent injunction requiring Mountaire to provide a permanent alternative water supply to residents with drinking water wells impacted by Mountaire's actions.

(h) That this Court enter a preliminary and permanent injunction requiring Mountaire to upgrade its WWTP, to include evaluation and repair of any leaking lagoons, such that its operation will meet all permit requirements, conditions and limitations.

(j) Such other relief as this Court deems necessary and proper.

**STATE OF DELAWARE  
DEPARTMENT OF JUSTICE**

/s/ Devera B. Scott

Devera B. Scott (Bar I.D. No. 4756)

Deputy Attorney General

102 West Water Street

Dover, DE 19904

(302) 739-4636

Devera.Scott@state.de.us

Attorney for State of  
Delaware Department of Natural Resources and  
Environmental Control

Dated: June 4, 2018